

Calendar No. 1566

86TH CONGRESS }
2d Session }

SENATE }

REPORT
No. 1505

GEORGE T. MOORE, CARL D. BERRY, AND DR. HAROLD J. HECK

JUNE 3, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 10631]

The Committee on the Judiciary, to which was referred the bill (H.R. 10631) for the relief of George T. Moore, Carl D. Berry, and Dr. Harold J. Heck, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of section 1 of the proposed legislation is to relieve George T. Moore, of Glencoe, Ill., an employee of the Department of Commerce, of liability to refund to the United States the sum of \$3,051, paid to him as per diem allowance in lieu of subsistence for the period from December 21, 1953, through November 30, 1954.

The purpose of section 2 of the proposed legislation is to relieve Carl D. Berry, of Winnetka, Ill., a former employee of the Department of Commerce, of liability to refund to the United States the sum of \$1,423.66, of which \$1,127.25 was paid to him as per diem allowance in lieu of subsistence for the period from March 9, 1955, through July 31, 1955, and of which \$296.41 was paid to him for travel between Washington, D.C., and Winnetka, Ill.

The purpose of section 3 of the proposed legislation is to relieve Dr. Harold J. Heck, of New Orleans, La., a former employee of the Department of Commerce, of liability to refund to the United States the sum of \$616.03, representing payments of a per diem allowance and travel expenses paid to him for the period June 1, 1955, through August 31, 1955.

STATEMENT

H.R. 10631 is identical in terms with S. 1347, upon which no action has yet been taken by this committee. In regard to H.R. 10631, the Judiciary Committee of the House of Representatives, in House Report 1332, states as follows:

An identical bill was favorably reported by the committee and passed the House in the 85th Congress, but no action taken by the Senate.

The facts will be found fully set forth in House Report 254, 85th Congress, 1st session, which is appended hereto and made a part of this report. Your committee concurs in the prior recommendation.

[H. Rept. 254, 85th Cong., 1st sess.]

This proposed legislation was submitted to the Speaker of the House of Representatives by the Secretary of Commerce and referred to this committee for review. After careful review, your committee recommends favorable consideration of the bill. Communication from the Secretary of Commerce is as follows:

THE SECRETARY OF COMMERCE,
Washington, D.C., December 19, 1956.

HON. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: The Department recommends to the Congress for its consideration the attached draft of a proposed bill for the relief of George T. Moore, Carl D. Berry, and Dr. Harold J. Heck.

There are also attached four copies of the Statement of Purpose and Need in support thereof.

We have been advised by the Bureau of the Budget that it would interpose no objection to the submission of the draft legislation to the Congress.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

STATEMENT OF PURPOSE AND NEED IN SUPPORT OF THE PROPOSED LEGISLATION FOR THE RELIEF OF GEORGE T. MOORE, CARL D. BERRY, AND DR. HAROLD J. HECK

The attached draft of legislation would relieve George T. Moore, Carl D. Berry, and Dr. Harold J. Heck of any liability for repayment of amounts erroneously paid to them as per diem allowance in lieu of subsistence and travel expense and would permit credit to the accounts of certifying and disbursing officers for amounts so paid.

Mr. Moore was employed by the Department in various capacities as a consultant and expert from December 21, 1953, through January 31, 1955. At the time of his employ-

ment it was believed by the Department that he would be entitled to a per diem allowance in lieu of subsistence while engaged on the Department's business in Washington, D.C., since he was appointed to serve with compensation at \$50 per diem, when actually employed, his appointment was of limited duration, his service as consultant or expert would be rendered in Washington, D.C., away from his home and regular place of business in Illinois, and he would be required to obtain temporary quarters in Washington, D.C., in addition to his residence in Illinois. Consequently the Department paid Mr. Moore per diem in lieu of subsistence to a total of \$3,051.

On December 30, 1954, the General Accounting Office first took exception to payment of per diem to Mr. Moore on a question relating to the nature of the duties and responsibilities assigned. No question whatever was perceived at that time as to the propriety of the payment of per diem allowance in relation to the intermittency of service rendered.

Subsequently, in June 1955, the General Accounting Office removed its previous objection and substituted the objection that the service rendered was not intermittent. This position was affirmed in letter of August 12, 1955. Two further vouchers totaling \$558 have since been returned unpaid and the Comptroller General has further advised that Mr. Moore is legally obligated to refund the payments erroneously made to him.

Mr. Berry's case is similar. He was employed by the National Bureau of Standards in the capacity as a fiscal consultant and expert from March 9, 1955, through July 31, 1955. It was believed by the Bureau that under the terms of his employment he was entitled to receive a per diem allowance of \$9 while engaged on Government business away from his regular place of business.

At the time of Mr. Berry's employment it was estimated that his task of making a fiscal survey of the National Bureau of Standards would require approximately 90 days. However, as the work progressed it was deemed advisable to extend the survey and make greater use of his services in order to cover areas not originally considered for review which had the effect of making his employment continuous in nature. Notwithstanding this new development, the assignment was considered of short duration and Mr. Berry did not move his family to Washington and continued to maintain his home in Winnetka, Ill. With the exception of three trips back to his home and regular place of business, he directed all of his efforts toward completing his fiscal survey for the Bureau.

Although the character of his employment did not change during the period under discussion, it was the view of the Bureau that Mr. Berry continued to be entitled to receive per diem allowance although circumstances had required his practically continuous attendance to Government business to accomplish the fiscal survey for which he had been employed. Consequently, payments were made to Mr. Berry in lieu of "out of pocket" expenses to a total of \$1,423.66.

Several days after the Comptroller General's letter with reference to Mr. Moore of August 12, 1955, was written, members of the staff learned through the normal course of the review of decisions from the Comptroller General that the circumstances under which per diem payments had been paid to the Assistant Secretary were similar to the arrangement entered into with Mr. Berry. By means of informal inquiry with representatives of the General Accounting Office staff it was ascertained that per diem allowance payments to Mr. Carl D. Berry were also considered improper and that appropriate steps should be taken to have this employee refund the payments previously made to him.

Dr. Heck was asked in the spring of 1955 if he would be available to work on the trade fair program which the Department was then getting underway. Dr. Heck's services were desired as an expert and consultant in the initiation of the program. The employment was to be for the summer of 1955 and the place of employment was to be Washington, D.C. At the time that Dr. Heck was contacted he indicated that since employment was only going to be for a few weeks, he was in no position to move his family to Washington but would have to maintain them in New Orleans while he made temporary arrangements for himself in Washington.

It was agreed that Dr. Heck's compensation should be at the rate of \$50 a day. The papers were processed showing a salary of \$41.52 per day plus \$9 per diem, making a total of \$50.52. Dr. Heck was advised that he was entitled to the per diem and to transportation to and from Washington at the time he received orders to report on duty.

It is believed that all of his duty was performed in good faith on both sides. However, General Accounting Office has ruled that it was inappropriate for Dr. Heck to receive travel and per diem allowances and have directed the Department to seek a refund of \$616.03 the amount erroneously paid. We have since been advised that in view of our intention to introduce legislation such as the attached draft bill relieving Dr. Heck from liability for repayment of the refund, collection of the indebtedness will be suspended until Congress has had an opportunity to consider this proposed legislation.

The liability for refund arose solely from faulty processing of Dr. Heck's papers and the actual intention at all times was that Dr. Heck should receive \$50 per diem as compensation for his services.

It is the view of this Department that, since the employment of Mr. Moore, Mr. Berry, and Dr. Heck was entered into in good faith on each side and the employees fully performed the duties for which employed, they should be given the relief proposed in the attached draft of bill. This is especially so since the liability to refund these subsistence payments arose solely as a result of good faith but erroneous interpretation of the application of the law to the facts of the case. The attached draft would authorize the employees

to keep all subsistence and travel allowances heretofore paid for the period of their employment as experts and consultants and would relieve the certifying officers of any possible liability resulting from their approving the vouchers therefor.

It should be noted that Mr. Moore's services as an expert and consultant on management proved to be so valuable that he was deemed to be the person most qualified for appointment as Assistant Secretary of Commerce for Administration when that office became vacant and he was so appointed.

Under the circumstances this Department urges favorable consideration of this legislation.

This committee, after careful consideration of all the facts and circumstances involved, is constrained to agree with the recommendation of the House Judiciary Committee, and it is, therefore, recommended that H.R. 10631 be favorably considered, without amendment.



It is a well-known fact that the British Government has been for many years past, and is still, in the habit of making large grants of money to the various companies and other bodies which are established for the purpose of carrying out its policy in India. These grants are made in the form of subsidies, and are intended to defray the expenses of the companies and other bodies in carrying out their work. The grants are made on the basis of the estimates of the companies and other bodies, and are subject to the approval of the Government. The grants are made in the form of cash, and are paid to the companies and other bodies in the form of cheques or drafts.

The grants are made in the form of cash, and are paid to the companies and other bodies in the form of cheques or drafts. The grants are made on the basis of the estimates of the companies and other bodies, and are subject to the approval of the Government. The grants are made in the form of cash, and are paid to the companies and other bodies in the form of cheques or drafts.